

## Message Text

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ORIGIN TRSE-00

INFO OCT-01 ARA-10 ISO-00 STR-07 COME-00 CTME-00  
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JUSE-00 AGRE-00 CEA-01 EB-08 FRB-03 H-01 INR-10  
INT-05 L-03 LAB-04 PA-01 AID-05 SS-15 ITC-01  
SP-02 SOE-02 OMB-01 DOE-15 /095 R

DRAFTED BY TREASURY:ELBARBER  
APPROVED BY STR:WKELLY  
STATE:WBARRACLOUGH  
COMMERCE:FMONTGOMERY  
STR:AWOLFF  
STR:RRIVERS  
TREASURY:JRAY

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FM SECSTATE WASHDC  
TO AMEMBASSY BRASILIA IMMEDIATE

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E.O. 11652: N/A

TAGS: ETRD, MTN

SUBJECT: US DRAFT ON SUBSIDIES FOR DORNELLES

PASS: FINANCIAL ATTACHE URGENTLY

1. AS WE PROMISED BRAZILIANS DURING RECENT TRADE SUBGROUP MEETINGS IN BRASILIA, FOLLOWING IS TEXT OF US DRAFT ON SUBSIDIES WHICH WAS GIVEN EC LATE IN APRIL IN GENEVA. TREASURY REP (SCHOTT) IS PASSING SAME DRAFT TO BARTHEL ROSA IN GENEVA THIS WEEK.
2. WHEN PRESENTING THIS PAPER TO BRAZILIANS, YOU SHOULD LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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MAKE FOLLOWING POINTS:

(A) THIS DRAFT WAS GIVEN THE EC INFORMALLY IN LATE APRIL IN GENEVA.

(B) OUR DISCUSSIONS WITH THE COMMUNITY SINCE APRIL HAVE PROCEEDED BEYOND THE POINT REPRESENTED BY THIS PAPER, BUT IN CONJUNCTION WITH THE ORAL EXPLANATIONS PROVIDED BY THE WOLFF MISSION IN BRAZIL, WE CONSIDER IT A USEFUL AND INFORMATIVE DOCUMENT.

(C) THE CONCEPTS IN THE PAPER ARE EVOLVING AND BEING AMPLIFIED IN LIGHT OF THE CONSULTATIONS WE HAVE BEEN HAVING,

AND WE ARE NOW IN A STAGE OF DRAFTING AND REDRAFTING PROPOSALS.

(D) HOWEVER, THE EVOLUTION AND EXPANSION WHICH IS TAKING PLACE IS IN THE BODY OF THE PAPER; THE ANNEXES REMAIN AS SET FORTH BELOW, FOR THE PRESENT.

(E) WE LOOK FORWARD TO HAVING THE OPPORTUNITY TO DISCUSS THIS PAPER FURTHER WITH DORNELLES IN WASHINGTON.

I. BEGIN TEXT: SUBSIDIES/COUNTERVAILING MEASURES --  
OUTLINE OF APPROACH

3. THE EXISTING GATT RULES WOULD PROVIDE THE STARTING POINT FOR AGREEMENT. THE EMPHASIS WOULD BE ON THE EFFECTS OF SUBSIDIES, NOT SUBSIDIES PER SE. THE DISTINCTIONS IN THE GATT BETWEEN (A) INTERNAL AND EXPORT SUBSIDIES AND (B) SUBSIDIES ON PRIMARY (OR AGRICULTURAL) AND NON-PRIMARY (OR NON-AGRICULTURAL) PRODUCTS WOULD BE RETAINED.  
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4. WITH REGARD TO COUNTERMEASURES, AGREEMENT WOULD BUILD UPON THE TWO TRACKS CURRENTLY IN THE GATT: (A) PROCEDURES FOR COUNTERVAILING DUTIES (ART. VI) AND (B) PROCEDURES FOR IMPAIRMENT OF TRADE AGREEMENT BENEFITS AND COUNTERMEASURES (ART. XXIII):

(A) COUNTERVAILING DUTIES COULD BE IMPOSED, IN ACCORDANCE WITH THE PROVISIONS OF GATT ART. VI, TO OFFSET SUBSIDIES WHERE SUBSIDIZED IMPORTS CAUSE OR THREATEN INJURY TO A DOMESTIC INDUSTRY OF ANOTHER SIGNATORY.

(B) PROCEDURES AND, COUNTERMEASURES WOULD BE AVAILABLE UNDER THE SECOND TRACK IN CASES WHERE A SUBSIDY PRACTICE PREJUDICES THE INTERESTS OF ANOTHER SIGNATORY THROUGH IMPAIRMENT OF BENEFITS UNDER THIS OR OTHER TRADE AGREEMENTS.

5. AN ACCEPTABLE SECOND TRACK PROCEDURE WOULD REQUIRE A STRENGTHENING OF EXISTING CONSULTATIVE AND DISPUTE RESOLUTION PROCEDURES.

6. A. SUBSIDIES - GENERAL COMMITMENT: SIGNATORIES WOULD RECOGNIZE THAT SUBSIDIES CAN PROMOTE IMPORTANT OBJECTIVES OF NATIONAL POLICY. HOWEVER, THERE WOULD ALSO BE RECOGNITION THAT THEY CAN CAUSE OR THREATEN SERIOUS PREJUDICE TO THE TRADE INTERESTS OF OTHER SIGNATORIES. THERE WOULD BE A GENERAL COMMITMENT TO AVOID CAUSING SUCH SERIOUS PREJUDICE THROUGH THE USE OF SUBSIDIES. SUBSIDY FOR PURPOSES OF

ART. XVI WOULD BE DEFINED.

7. B. INTERNAL SUBSIDIES: SIGNATORIES WOULD SEEK TO AVOID CAUSING SERIOUS PREJUDICE TO THE INTERESTS OF OTHER SIGNATORIES THROUGH THE USE OF INTERNAL SUBSIDIES. SERIOUS PREJUDICE IN THIS CONTEXT WOULD INCLUDE (1) INJURY OR THREAT OF INJURY TO A DOMESTIC INDUSTRY (WITHIN THE MEANING OF GATT ART. VI); (2) IMPAIRMENT OF THE VALUE OF TARIFF LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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CONCESSIONS, AS PROVIDED IN PARAGRAPH 13 OF THE REPORT OF THE WORKING PARTY ON OTHER BARRIERS TO TRADE ADOPTED BY THE CONTRACTING PARTIES ON MARCH 3, 1955; OR (3) IMPAIRMENT OF THIS OR OTHER TRADE AGREEMENT BENEFITS (E.G. GATT BENEFITS AS CONTEMPLATED UNDER ART. XXIII).

8. IN CONNECTION WITH THIS PROVISION, THE AGREEMENT WOULD CONTAIN AN ANNEX WHICH WOULD LIST SPECIFIC SUBSIDY PRACTICES (FOR DRAFT, SEE ANNEX A) AS "INDICATIVE GUIDELINES".

9. C. EXPORT SUBSIDIES - PRIMARY (OR AGRICULTURAL) PRODUCTS: (TO BE DEFINED)

10. D. EXPORT SUBSIDIES - NON-PRIMARY (OR NON-AGRICULTURAL) PRODUCTS: SIGNATORIES WOULD REAFFIRM THE COMMITMENT OF GATT ART. XVI:4 NOT TO GRANT EXPORT SUBSIDIES ON NON-PRIMARY (OR NON-AGRICULTURAL) PRODUCTS. EXPORT SUBSIDY WITHIN THE MEANING OF ART. XVI:4 WOULD BE DEFINED AND THE PRESENT DUAL PRICING CRITERIA WOULD BE ELIMINATED. ALSO, THE 1960 ILLUSTRATIVE LIST WOULD BE UPDATED (FOR DRAFT OF UPDATED ILLUSTRATIVE LIST, SEE ANNEX B).

11. VIOLATION OF THE ART. XVI:4 COMMITMENT WOULD INVOLVE PRIMA FACIE IMPAIRMENT OF TRADE AGREEMENTS BENEFITS AND SO CREATE A PRESUMPTION OF ADVERSE EFFECT (OR SERIOUS PREJUDICE) TO THE INTERESTS OF ANOTHER SIGNATORY.

12. E. NOTIFICATION, CONSULTATION AND DISPUTE RESOLUTION PROCEDURES: (DRAFT PROVISIONS TO BE PRESENTED BY THE EUROPEAN COMMUNITIES)

13. F. COUNTERVAILING DUTIES

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II. ANNEX A - UNDERSTANDING ON INTERNAL SUBSIDIES

14. SUBSIDIES CAN PROMOTE IMPORTANT OBJECTIVES OF

NATIONAL POLICY. HOWEVER, ANY SUBSIDY WHICH PROVIDES AN INCENTIVE TO, OR REDUCES THE COST OF, THE PRODUCTION, DISTRIBUTION OR SALE OF GOODS MAY (1) CAUSE OR THREATEN INJURY (WITHIN THE MEANING OF GATT ART. VI) TO THE DOMESTIC PRODUCERS OF ANOTHER SIGNATORY COUNTRY OR (2) MAY IMPAIR BOUND CONCESSIONS OR OTHER BENEFITS ACCRUING TO

ANOTHER SIGNATORY UNDER THE GATT OR THIS AGREEMENT.

15. SIGNATORIES THEREFORE AGREE THAT:

(A) IF THE EFFECT OF A SUBSIDY IS TO CAUSE OR THREATEN TO CAUSE INJURY TO A DOMESTIC INDUSTRY OF A SIGNATORY TO THIS AGREEMENT, THAT COUNTRY MAY IMPOSE COUNTERVAILING DUTIES, IN ACCORDANCE WITH THE PROVISIONS OF ART. VI AND THIS AGREEMENT, TO OFFSET THE SUBSIDY;

(B) IF THE EFFECT OF A SUBSIDY IS TO IMPAIR BOUND CONCESSIONS OR OTHER BENEFITS ACCRUING TO A SIGNATORY UNDER THIS OR OTHER TRADE AGREEMENTS, THAT SIGNATORY MAY BRING A CLAIM OF IMPAIRMENT AND, AS APPROPRIATE, MAY TAKE OFFSETTING MEASURES IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT;

(C) FOR PURPOSES OF DETERMINING IMPAIRMENT OF NEGOTIATED CONCESSIONS BOUND UNDER ART. II OF THE GATT, THE SIGNATORIES RECOGNIZE AND REAFFIRM THE PROVISIONS OF THE WORKING PARTY REPORT, ADOPTED BY THE CONTRACTING PARTIES ON MARCH 3, 1955, UNDER WHICH A CONTRACTING PARTY WHICH HAS NEGOTIATED A CONCESSION UNDER ART. II MAY BE ASSUMED TO HAVE A REASONABLE EXPECTATION, FAILING EVIDENCE TO THE CONTRARY, THAT THE VALUE OF THE CONCESSION WILL NOT BE NULLIFIED OR IMPAIRED BY THE SUBSEQUENT INTRODUCTION OR LIMITED OFFICIAL USE  
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INCREASE OF A SUBSIDY ON THE PRODUCT CONCERNED.

16. FOR PURPOSES OF THIS UNDERSTANDING, PARTICULAR ATTENTION HAS BEEN DRAWN TO THE FOLLOWING PRACTICES:

(A) GOVERNMENT PARTICIPATION IN AN ENTERPRISE TO THE EXTENT SUCH PARTICIPATION AFFECTS IMPORT OR EXPORT TRADE IN A MANNER INCONSISTENT WITH COMMERCIAL CONSIDERATIONS, INCLUDING PRICE; GOVERNMENT PARTICIPATION IN AN ENTERPRISE TO THE EXTENT SUCH PARTICIPATION IS FOR PURPOSES OF COVERING SIGNIFICANT OPERATING LOSSES OVER A SUSTAINED PERIOD OF TIME;

(B) REGIONAL DEVELOPMENT PROGRAMS TO THE EXTENT SUCH PROGRAMS PROVIDE ASSISTANCE BEYOND THAT NECESSARY TO COMPENSATE FOR THE ECONOMIC DISADVANTAGE OF LOCATING IN A PARTI-

CULAR REGION VIS-A-VIS OTHER REGIONS IN THE COUNTRY;

(C) GOVERNMENT GRANTS FOR AN INDIVIDUAL UNDERTAKING BY A PRIVATE ENTERPRISE IN EXCESS OF (X) OF THE TOTAL CAPITAL COST OF THE UNDERTAKING;

(D) GOVERNMENT LOANS/GUARANTEES OF A LOAN FOR AN INDIVI-

DUAL UNDERTAKING BY A PRIVATE UNDERTAKING IN EXCESS OF (X) OF THE TOTAL CAPITAL COST OF THE UNDERTAKING WHEN SUCH A LOAN OR GUARANTEE CARRIES AN EFFECTIVE INTEREST RATE (Y) BELOW THE RATE WHICH WOULD NORMALLY BE CHARGED BY COMMERCIAL BANKS FOR A SIMILAR LOAN; AND

(E) PROVISION OF INFRASTRUCTURE SERVICES BELOW PRICE LEVELS NORMALLY PROVIDED FOR COMMERCIAL UNDERTAKINGS.

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17. THIS LIST IS ILLUSTRATIVE AND DESIGNED TO PROVIDE GUIDELINES WITH RESPECT TO THE USE OF INTERNAL SUBSIDIES THAT AFFECT INTERNATIONAL TRADE. SIGNATORIES AGREE TO SEEK TO AVOID THESE AND OTHER PRACTICES IN A MANNER WHICH CAUSES SERIOUS PREJUDICE TO THE TRADE INTERESTS OF OTHERS.

III. ANNEX B: UNDERSTANDING ON EXPORT SUBSIDIES FOR NON-PRIMARY PRODUCTS.

18. A NUMBER OF CONTRACTING PARTIES HAVE AGREED TO THE PROVISIONS IN GATT ARTICLE XVI:4 NOT TO GRANT, EITHER DIRECTLY OR INDIRECTLY, SUBSIDIES ON THE EXPORT OF ANY PRODUCT OTHER THAN A PRIMARY PRODUCT.

19. SIGNATORIES TO THIS AGREEMENT AGREE THAT THIS OBLIGATION IS APPLICABLE TO ANY EXPORT SUBSIDY AS DEFINED BELOW, AND IS SPECIFICALLY NOT DEPENDENT ON THE DUAL-PRICE CRITERION SET OUT IN GATT ARTICLE XVI:4.

20. FOR THE PURPOSES OF GATT ART. XVI:4, AN EXPORT SUBSIDY WOULD BE DEFINED AS: (DEFINITION TO BE PROVIDED)

21. THE FOLLOWING UPDATED LIST IS ILLUSTRATIVE OF THE TYPES OF EXPORT SUBSIDY PRACTICES OF PARTICULAR CONCERN WHICH ARE SUBJECT TO THE PROVISIONS OF ART. XVI:4. THE LIST IS NOT EXHAUSTIVE;

(A) CURRENCY RETENTION SCHEMES OR ANY SIMILAR PRACTICES WHICH INVOLVE A BONUS ON EXPORTS OR RE-EXPORTS.

(B) THE PROVISION BY GOVERNMENTS OF DIRECT PAYMENTS TO EXPORTERS.

(C) INTERNAL TRANSPORT AND FREIGHT SUBSIDIES ON EXPORT SHIPMENTS.

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(D) THE PROVISION BY GOVERNMENTS (OR SPECIAL INSTITUTIONS CONTROLLED BY GOVERNMENTS) OF INSURANCE AGAINST INCREASES IN THE COSTS OF EXPORTED PRODUCTS AT PREMIUM RATES WHICH ARE INADEQUATE TO COVER OPERATING COSTS AND LOSSES OF THE

INSURANCE INSTITUTIONS.

(E) THE EXEMPTION, REMISSION (INCLUDING CREDIT ALLOWANCES) OR DEFERRAL OF DIRECT TAXES OR SOCIAL WELFARE CHARGES PAID OR PAYABLE BY INDUSTRIAL OR COMMERCIAL ENTERPRISES WHEN THE CRITERION FOR REMISSION OR DEFERRAL IS RELATED TO THE EXPORT PERFORMANCE, OR WHEN SUCH ACTION ENCOURAGES INTRA-ENTERPRISE PRICING PRACTICES THAT DO NOT CONFORM TO STRICT ARMS-LENGTH PRICING POLICIES.

(F) THE EXEMPTION, IN RESPECT OF EXPORTED GOODS, OF CHARGES OR TAXES, OTHER THAN CHARGES IN CONNECTION WITH IMPORTATION OR INDIRECT TAXES LEVIED AT ONE OR SEVERAL STAGES ON THE SAME GOODS IF SOLD FOR INTERNAL CONSUMPTION, AND THE REMISSION OF TAXES ON CAPITAL EQUIPMENT AND AUXILIARY MATERIALS AND SERVICES USED IN THE PRODUCTION AND TRANSPORTATION OF SUCH GOODS (TAX OCCULTES).

(G) THE ALLOWANCE OF SPECIAL DEDUCTIONS RELATED TO EXPORTS, OVER AND ABOVE THOSE GRANTED IN RESPECT TO PRODUCTION FOR DOMESTIC CONSUMPTION, IN THE CALCULATION OF THE BASE ON WHICH DIRECT TAXES ARE CHARGED.

(H) THE REBATE OF INDIRECT TAXES OR CHARGES ON EXPORTS OR COMPONENTS THEREOF, IN EXCESS OF ACCRUED INDIRECT TAXES OR CHARGES ON THE EXPORTED PRODUCTS.

(I) IN RESPECT OF DELIVERIES BY GOVERNMENTS OR GOVERN-  
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MENTAL AGENCIES OF IMPORTED RAW MATERIALS FOR EXPORT BUSINESS ON DIFFERENT TERMS THAN FOR DOMESTIC BUSINESS, THE CHARGING OF PRICES BELOW WORLD PRICES.

(J) THE PROVISION OF OFFICIAL EXPORT CREDITS ON NON-COMMERCIAL TERMS. AN INTERNATIONAL ARRANGEMENT OR OTHER INTERNATIONAL UNDERTAKINGS ON OFFICIAL EXPORT CREDITS TO

WHICH THE SIGNATORIES ARE PARTIES WOULD CONSTITUTE GUIDELINES FOR THE DETERMINATION OF NON-COMMERCIAL TERMS.

IV. ANNEX C: SPECIAL PROVISION WITH RESPECT TO EXPORT SUBSIDIES AND COUNTERVAILING DUTIES ON AGRICULTURAL PRODUCTS

22. A. EXPORT SUBSIDIES: SIGNATORIES AGREE THAT EXPORT SUBSIDIES MAY NOT BE CONFERRED ON AGRICULTURAL PRODUCTS IF THE SUBSIDY IS PROVIDED BY GOVERNMENT EXPENDITURES, UNLESS SUCH SUBSIDY:

(A) IS IN ACCORDANCE WITH PROVISIONS AGREED IN INTERNATIONAL COMMODITY AGREEMENTS OR UNDERTAKINGS; OR

(B) IS NOT USED TO AUGMENT THE COUNTRY'S SHARE OF A PARTICULAR PRODUCT IN THE WORLD MARKET OR AN INDIVIDUAL COUNTRY MARKET.

23. VIOLATION OF THIS COMMITMENT SHALL BE CONSIDERED PRIMA FACIE IMPAIRMENT FOR THE PURPOSE OF TAKING OFFSETTING MEASURES.

24. B. COUNTERVAILING DUTIES: FOR THE PURPOSE OF IMPOSITION OF COUNTERVAILING DUTIES, INJURY SHALL INCLUDE INTERFERENCE WITH ANY DOMESTIC AGRICULTURAL SUPPORT PROGRAM OR ANY OTHER INTERFERENCE WITH ORDERLY MARKETING OF AGRICULTURAL PRODUCTS. CHRISTOPHER

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 26 sep 1999  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** AGREEMENT DRAFT, SUBSIDIES, NEGOTIATIONS, TRADE AGREEMENTS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 24 may 1978  
**Decaption Date:** 01 jan 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 20 Mar 2014  
**Disposition Event:**  
**Disposition History:** n/a  
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**Disposition Remarks:**  
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**Executive Order:** N/A  
**Errors:** n/a  
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**Review Event:**  
**Review Exemptions:** n/a  
**Review Media Identifier:**  
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**Review Release Event:** n/a  
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**Review Markings:**  
Sheryl P. Walter  
Declassified/Released  
US Department of State  
EO Systematic Review  
20 Mar 2014  
**Markings:** Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014